

RESOLUTION NO. 23-30

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES, COLORADO
APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY AND
HORD COPLAN MACHT, INC. FOR PARK DESIGN SERVICES

WHEREAS, the City of Castle Pines (“City”) is authorized to enter into contracts for the performance of general municipal governance and services; and

WHEREAS, the City issued a request for proposals for comprehensive park design services related to Coyote Ridge Park and Soaring Hawk Park; and

WHEREAS, Hord Coplan Macht, Inc. (“Consultant”) submitted a response to the City’s request for proposals, and represents that it has the requisite expertise and experience to perform the park design services; and

WHEREAS, the City desires to contract with the Consultant subject to the terms of a professional services agreement.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. The Recitals to this Resolution are incorporated for all purposes as if fully set forth herein.

Section 2. The City Council hereby: (a) approves the professional services agreement with the Consultant in a not-to-exceed amount of \$107,007.00 in substantially the same form as set forth in **Exhibit A** attached to this Resolution (“Agreement”); (b) authorizes the City Manager, in consultation with the City Attorney, to make non-material changes to the Agreement as deemed necessary by the City Manager to effectuate the intent of this Resolution; and (c) authorizes the City Manager to execute the Agreement in a form approved by the City Attorney.

Section 3. This Resolution shall take effect upon its approval by the City Council.

INTRODUCED, READ, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 6 IN FAVOR AND 0 AGAINST THIS 23rd DAY OF JUNE 2023.



ATTEST:

Tobi Duffey

Tobi Duffey, MMC, City Clerk

Tracy Engerman
Tracy Engerman (Jun 19, 2023 14:12 MDT)

Tracy Engerman, Mayor

APPROVED AS TO FORM:

Linda C Michow

Linda C. Michow, City Attorney

EXHIBIT A
[AGREEMENT FOR PROFESSIONAL SERVICES]

City of Castle Pines, Colorado
AGREEMENT FOR PROFESSIONAL SERVICES

Project/Services Name: Soaring Hawk Park and Coyote Ridge Park Design

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into by and between the City of Castle Pines, a home rule municipality of the State of Colorado, with offices at 360 Village Square Lane, Suite B, Castle Pines, Colorado 80108 (the “City”), and Hord Coplan Macht Inc., a Maryland corporation authorized to do business in Colorado (Colorado ID No. 20141682375) with offices at 1800 Wazee Street, Suite 450, Denver, CO 80202 (“Contractor”) (each individually a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the City issued a request for proposals for comprehensive park design services related to Coyote Ridge Park and Soaring Hawk Park ; and

WHEREAS, Contractor submitted a response to the City’s request for proposals, attached as **Exhibit A**, and represents that it has the requisite expertise and experience to perform the professional services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. **Services.** Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities as more specifically described in the Contractor’s proposal/ scope of services dated and attached to this Agreement as **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services” or “Scope of Services”). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. **Changes to Services.** A change in the Scope of Services shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Agreement.

C. Duty to Inform. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

D. Time of Performance. The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services. Contractor agrees that failure to complete any of the Services during the term of this Agreement may be deemed a breach of this Agreement.

II. TERM AND TERMINATION

A. Term. This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until March 31, 2024 or until terminated as provided herein ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation.

B. City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event the City exercises its right of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished materials, documents, data, studies and reports prepared by the Contractor pursuant to this Agreement to the City and such materials, documents, data, studies, and reports shall become the property of the City; and

3. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services performed and reimbursable expenses incurred prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall deliver such final accounting and final invoice to the City within thirty (30) days of the date of termination; thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance, state a reasonable time to cure the non-performance, and set a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, "reasonable time" shall not be less than five (5) business days. In

the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. If the notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor, which notice shall state a specific date of suspension. Upon Contractor's receipt of such notice of suspension from the City, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed in accordance with this Agreement prior to the date of suspension. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the City.

E. Delivery of Notices. Any notice required or permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XII.D of this Agreement, or such other address as either Party may notify the other of, and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

III. REPRESENTATIVES AND SUPERVISION

A. City Representative. The City representative responsible for oversight of this Agreement and the Contractor's performance of Services hereunder shall be the City Manager or the City Manager's designee ("City Representative"). The City Representative shall act as the City's primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be Robyn Bartling, Principle-in-Charge ("Contractor Representative"). The Contractor Representative shall act as the Contractor's primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform the Services with little or no daily supervision which results in the City's need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement. Notwithstanding the foregoing, the City reserves the right to monitor and evaluate the progress and performance of the Contractor to ensure the terms of this Agreement are being

satisfactorily met in accordance with the Standard of Performance in Section V.B. Contractor shall cooperate with the City relating to such monitoring and evaluation.

IV. COMPENSATION

A. Not-to-Exceed Amount. Following execution of this Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Compensation to be paid hereunder shall not exceed One Hundred Seven Thousand and Seven Dollars (\$107,007.00) (“Not-to-Exceed Amount”) unless a different amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement. Notwithstanding the amount specified in this Section, Contractor shall be paid only for work performed. Contractor shall not be paid until tasks identified in the Scope of Services are performed to the satisfaction of the City. In consideration for the completion of the Scope of Services by Contractor, the City shall pay Contractor as follows:

- If this box is checked, the City shall pay Contractor on a time and materials basis in accordance with the rate schedule shown in Section 06, titled *Fee Proposal*, in **Exhibit A**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the City for such fees, costs and expenses. Final payment may be requested by the Contractor upon completion and the City’s acceptance of all work or Services as set forth in **Exhibit A**.
- If this box is checked, the City shall pay the Contractor the Not-to-Exceed Amount in a single lump sum payment on [insert date here] .

B. Invoicing. The City shall make payments to Contractor in accordance with subsection A of this Section IV within thirty (30) days after receipt and approval of invoices submitted by Contractor. If payment is on a time and materials basis, Contractor shall submit invoices to the City no more frequently than monthly and shall identify the specific Services performed for which payment is requested.

C. Receipts. The City, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the City’s interest. The City, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

D. Reimbursable Expenses.

1. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses.

2. If the Agreement is for compensation based on a time and materials basis, the following shall be considered “reimbursable expenses” for purposes of this Agreement and may be billed to the City without administrative mark-up, which must be accounted for by the

Contractor, and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

- None
- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services
- Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor, shall not be billed or invoiced to the City, and shall not be paid by the City.

E. No Waiver. The City's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

V. PROFESSIONAL RESPONSIBILITY

A. General. Contractor hereby agrees that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing required by law.

B. Standard of Performance. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement. If Contractor engages subcontractors to perform any part of the Services, Contractor shall require and confirm that the requirements of Section VII (Insurance) and Section VIII (Indemnification) of this Agreement are included in any such subcontract. Contractor shall be responsible and liable to the City for indemnification of the City on behalf of a subcontractor if Contractor fails to confirm that the requirements of Section VIII are included in any subcontract between Contractor and a subcontractor related to this Agreement.

VI. INDEPENDENT CONTRACTOR

A. General. Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes and shall not be considered employees or agents of the City. Contractor shall make no representation that it is a City employee for any purposes.

B. Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, ordinances, and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits, or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

C. Insurance Coverage and Employment Benefits. The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

D. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the

City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

VII. INSURANCE

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); OR
- The Contractor shall secure and maintain the following ("Required Insurance"):
 - Worker's Compensation insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law.
 - Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
 - Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

- Professional Liability (errors and omissions) insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Additional Requirements. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy. For any and all insurance policies required hereunder, Contractor shall waive subrogation rights against the City.

C. Insurance Certificates. Contractor shall provide to the City a certificate of insurance and all endorsements required hereunder as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify the Project/Services Name as set forth on the first page of this Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the City, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the City immediately upon demand by the City. At the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor

or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. RESERVED

X. REMEDIES

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions the City may take include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or

2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or

4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

XI. RECORDS AND OWNERSHIP

A. Retention and Open Records Act Compliance. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-101 *et seq.* ("CORA"). As such, this Agreement may be subject to public disclosure under CORA. Furthermore, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City's records retention and

disposal policies. Those records which constitute “public records” under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor’s willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor’s right to defend against disclosure of records alleged to be public.

B. City’s Right of Inspection. The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.

C. Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Castle Pines upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the CORA to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

D. Return of Records to City. At the City’s request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

XII. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

If to the City:

If to Contractor:

City of Castle Pines Attn: City Manager 360 Village Square Lane, Suite B Castle Pines, Colorado 80108	Hord Coplan Macht, Inc. Attn: Robyn Bartling 1800 Wazee Street, Suite 450 Denver, Colorado 80202
With Copy to: Castle Pines City Attorney Michow Cox & McAskin LLP 6530 S. Yosemite Street, Suite 200 Greenwood Village, Colorado 80111	With Copy to:

E. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

G. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. Governmental Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (“CGIA”), or otherwise available to the City and its officers or employees.

J. Rights and Remedies. In the event of a breach of this Agreement by Contractor, the City shall have the right, but not the obligation, to obtain specific performance of the Services. In addition, if the City terminates this Agreement, in whole or in part, due to a breach by Contractor, Contractor shall be liable for actual and consequential damages to the City. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XII shall not authorize assignment.

M. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. Survival. The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XII (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) Annual Appropriation), and (N) (Release of Information) , shall survive the expiration or termination of this Agreement. Any additional terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

P. Agreement Controls. In the event a conflict exists between this Agreement and any term or provisions in any exhibit attached or incorporated into this Agreement, the terms and provisions in this Agreement shall supersede and control over the terms and provisions in such exhibit.

Q. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires,

floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

R. Protection of Personal Identifying Information. In the event the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, et seq., relating to third-party services providers.

S. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Castle Pines and the Contractor and to bind their respective entities.

T. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

U. No Personal Liability. No director, employee or agent of either the City or the Contractor shall have any individual liability to the other.

V. Limitation of Liability. There are a variety of risks which potentially affect Contractor performing Services as architect by virtue of entering into this Agreement to perform professional services on the City's behalf. In order for City to obtain the benefit of a fee which does not need to account for unlimited risks, City agrees to limit Contractor's liability to City as set forth herein. To the fullest extent permitted by law, the total liability of Contractor with regard to the Services under any and all theories of liability shall be limited to the per claim amount of Professional Liability Insurance required of the Contractor as per Section VII.A.

THIS AGREEMENT is executed and made effective as provided herein.

CITY OF CASTLE PINES, COLORADO:

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

ATTEST:

Tobi Duffey, MMC, City Clerk

APPROVED AS TO FORM (*excluding exhibits*):

Linda Michow, City Attorney

EXHIBIT A
SCOPE OF SERVICES

02 APPROACH

The HCM Design Approach is built upon the City's vision and goals for Parks, Recreation and Amenities. We plan to achieve four Key Success Opportunities – based on the City's roles and “gold standard” stated in the 2022 PaRC Plan Update:



CONSERVATION

Understanding the high priority for Castle Pines residents of maintaining and enhancing existing natural resources, we will work to preserve and protect scenic beauty and open space, connect children (of all ages) to nature, and provide recreation facilities and programming that fosters environmentally sustainable awareness and way of life.



HEALTHY LIFESTYLE

All the parks and open space in Castle Pines are intended to facilitate healthy lifestyle for residents and users. The design process for these 2 parks will push that goal further with interactive planning for improvements that consider both active and passive health and well-being through flexible opportunities for physical activity and connection to nature and community.



SOCIAL EQUITY

Parks are catalysts for human interaction, recreation, and community. It is important to consider universal access so that all people, abilities, and generations have equal opportunity to participate and benefit. We will work to design successful quality spaces that encourage recreational opportunities for all and enhance the sense of community.



OPERATIONAL EFFICIENCY

We are aware that the City needs to build sustainability and resiliency into its park and recreation spaces for the long term, and strategically invest in the parks' design improvements. We will develop design solutions with attention to costs and phasing, and ease of operations and maintenance while achieving community priorities.

By always keeping focus on these Key Success Opportunities, the HCM team will provide quality design for the community, and further the goals and intentions already established by the City of Castle Pines.

Our design team will work collaboratively with the City to create a comprehensive process that utilizes the staff's in-depth knowledge, experience, and ideas. We will undertake the proposed Concept Plan process in five key phases, as described in the detailed Approach below. During this process, input will be sought from both the community and City staff.

PHASE 1: PROJECT INITIATION

- Kickoff Meeting with City Staff: Meet with a core group of City staff to define guiding principles, goals, needs and opportunities/challenges, and maintenance/sustainability goals for the project.
- Schedule: Develop a project schedule incorporating community public input meetings.
- Review the 2022 Parks and Recreation Comprehensive Plan Update (PaRC Plan Update), adjacent trails and open space, and other relevant documentation.

Phase 1 City Responsibilities:

- Attend Kickoff meeting

PHASE 2: INVENTORY AND ANALYSIS

- Investigate: Collect data on the existing sites, surrounding parcels, etc. and perform site visit to each park.
- Inventory: Complete site inventories and due diligence including grading, accessibility and safety standards, utilities and easements, vegetation, and circulation.
- Analyze: Study existing conditions, issues and opportunities drawings and supporting documentation to gain further understanding of the two parks' context within the larger community.
- Document: Document inventory and analysis.

Deliverables:

- One (1) PDF plan illustrating Inventory and Analysis for each park
- One (1) PDF narrative from the design team addressing existing conditions related to hardscape and landscape, irrigation, civil engineering, electrical engineering, structures, and signage.

Phase 2 City Responsibilities:

- Attend site visits.
- Provide land survey(s), geotechnical report(s), and other existing condition documentation.



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PHASE 3: CONCEPT PLANNING AND COMMUNITY ENGAGEMENT

- **Public Input Plan:** Outline plan and schedule for public meetings and social media opportunities. We propose Open House events for the community to identify priorities (previous and new), future vision and emerging trends.
- **Graphic Tools:** Prepare support graphics for each meeting and social media sites.
- **Open House #1A and 1B:** Given the two park locations and neighborhood contexts, we recommend separate events for Coyote Ridge and Canyonside Parks for each of the opens proposed. The first community meeting is intended to function as a catalyst for the project and an opportunity to gain valuable insight on the community's vision for the park spaces. We will provide contextual information, precedent images for dot voting, and questionnaires to survey community input and feedback, which could also be provided online via the City's website.
- **Preliminary Design Team Recommendations:** Incorporate high-level recommendations on grading and drainage, accessibility, utilities and lighting, preliminary signage, furnishings, landscape and hardscape improvements, and structures.
- **Draft Concept Plans:** Preliminary concepts (up to two for each park) will be developed and presented in a review meeting with City staff. Refinements will be made to the drawings as required in preparation of the second community meeting.

- **Open House #2A and 2B:** A primary desired outcome of the second community meeting will be to gauge feedback on a preferred concept, or at least options that would constitute a preferred concept, including feedback on future needs of the community. We will provide the Draft Concept Plans for feedback in both public format and individual questionnaires.
- **Documentation:** Prepare a summary of information gathered at the Open Houses.

Deliverables:

- *Two (2) PDF summaries with Draft Concept Plans and Recommendations (2 per park). Recommendations will include narratives from the design team on potential improvements including hardscape and landscape, irrigation, grading and drainage, utilities and lighting, signage, site furnishings, multi-purpose shade structure, car and bike parking, circulation, and accessibility.*
- *One (1) PDF summary of data and community preference information*

Phase 3 City Responsibilities:

- *Secure venues for the community open houses*
- *Assist with the community outreach strategy*
- *Participate in the community open houses*
- *Attend review meeting(s) with the design team*



PHASE 4: FINAL CONCEPT PLANS AND REVIEW

- Final Design Team Recommendations: Incorporate high-level recommendations on grading and drainage, accessibility, utilities and lighting, preliminary signage, furnishings, landscape and hardscape improvements, and structures.
- Final Concept Plans: Prepare a final draft plan for each park that incorporates the comments, concerns and visioning we have heard from previous input.
- Support Graphics: Prepare lively, understandable and interactive support graphics to accompany the plans.
- Estimate of Probable Costs: Prepare a detailed cost estimate for each park based on the final concept plans.
- Open House #3A and 3B: Present final concept plan and graphics to the community for each park and collect final feedback.

Deliverables:

- Two (2) PDF summaries with Final Concept Plans and Recommendations (1 per park). Recommendations will include narratives from the design team building on the draft and identifying proposed improvements including hardscape and landscape; irrigation needs with water budgets; grading and drainage, including detention/water quality; utilities and lighting with layout and one-line diagram; signage and wayfinding needs; site furnishings, multi-purpose shade and concert structure; car and bike parking, circulation, and accessibility.
- One (1) PDF summary of feedback and community preference information
- One (1) Estimate of Probable Costs based on the Final Concept Plans.

Phase 4 City Responsibilities:

- Secure venues for the community open houses
- Participate in the community open houses
- Attend review meeting with the design team

PHASE 5: PRESENTATION OF FINDINGS

- Recommendations: Summarize recommendations based on community and City priorities, probable costs and budget, constructability, and phasing.
- Parks and Recreation Advisory Board: Present design solutions and documents for approval.
- City Council: Present design solutions and documents for approval.

Deliverables:

- One (1) final PDF summary with Final Design Plans, Recommendations and Phasing (1 per park) to be used by the City as a Technical Memorandum/Appendix to the PaRC Plan Update.

Phase 5 City Responsibilities:

- Attend review meeting with the design team
- Attend Parks and Recreation Advisory Board meeting
- Attend City Council meeting



03 PUBLIC PARTICIPATION

Community Engagement

Community engagement will be critical to our design process. HCM is known for our inclusive and thoughtful participation process. We will meet with City staff and the community to build consensus and create a vision that balances the programming of these parks with the four Key Success Opportunities of conservation, healthy lifestyle, social equity, and operational efficiency. From informal conversations at community meetings to data collection, our collaborative process is designed to gain valuable insights into what the community envisions for its park spaces.

We anticipate the first step will be to review the community engagement process with you. During the Project Initiation phase of the project, we will present our thoughts for community engagement to the City and share a cooperative discussion on ways to attract the best possible community involvement, as you have a good sense already of how to obtain valuable information from your residents. In addition, given the two different park locations and neighborhood contexts, we recommend separate community events for Coyote Ridge and Canyonside Parks for each of the community meetings proposed – these are labeled below as “A and B” events. The following outline identifies the meetings we anticipate for an engaging community process:

- **Open House #1A and 1B:** The first community meeting is intended to function as a catalyst for the project and an opportunity to gain valuable insight on the community's vision for the park spaces. We will provide contextual information, precedent images for dot voting, and questionnaires to survey community input and feedback, which could also be provided online via the City's website. Since the community was surveyed for the 2016 PaRC Plan, we suggest a less formal questionnaire format at this early stage that can be answered at an event or online to supplement that survey data collected.

- **Open House #2A and 2B:** A primary desired outcome of the second community meeting will be to gauge feedback on a preferred concept, or at least options that would constitute a preferred concept, including feedback on future needs of the community. We will provide the Draft Concept Plans for feedback in both public format and individual questionnaires.

- **Open House #3A and 3B:** Present final concept plan and graphics to the community for each park and collect final feedback.

- **Parks and Recreation Advisory Board:** Present design solutions and documents for approval.

- **City Council:** Present design solutions and documents for approval.

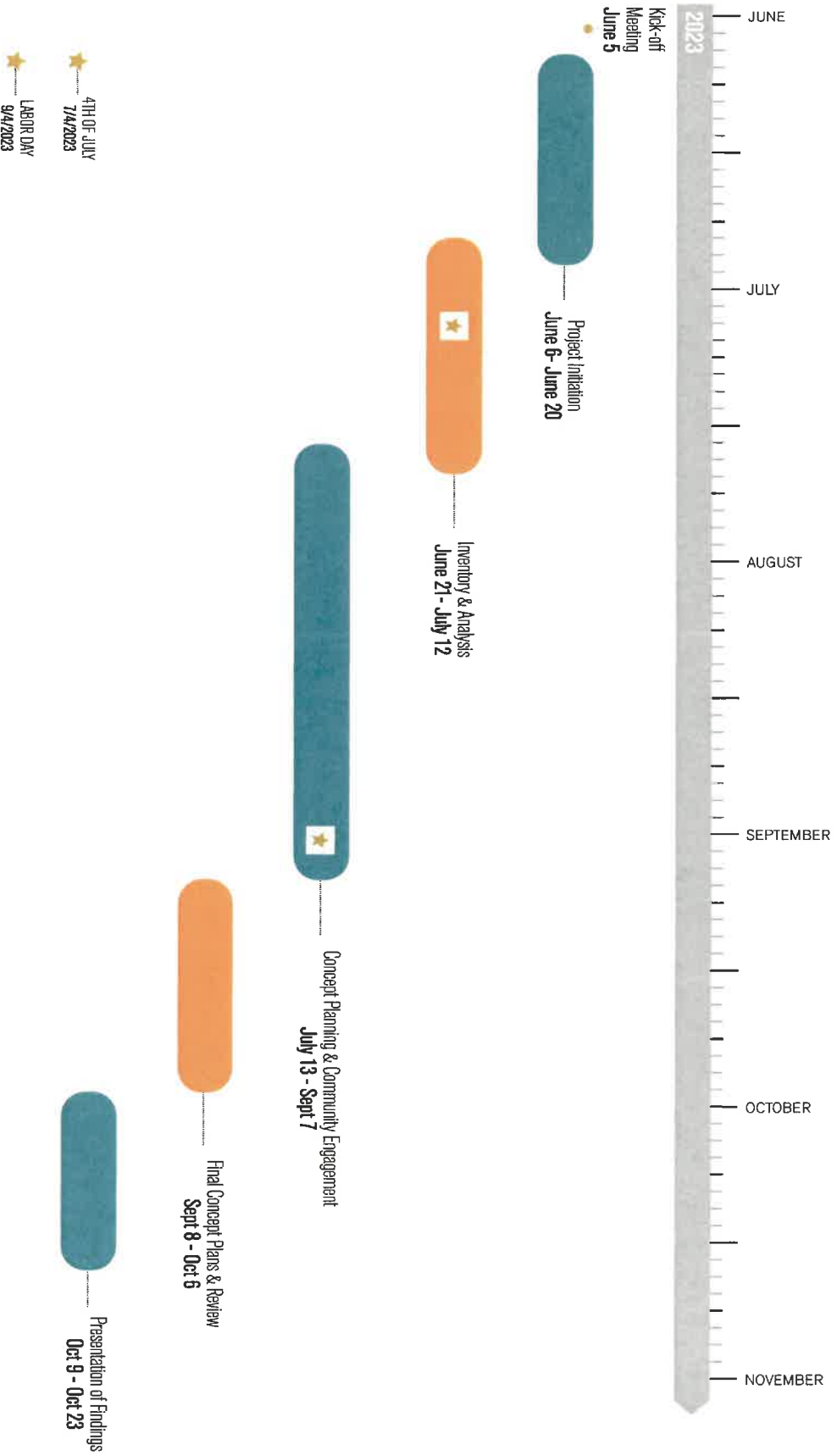
We see several essential components to successful community outreach:

- Giving all residents a chance to be heard
- Providing residents and local community leadership an understanding of what the park spaces can become
- Mobilizing support around a shared vision for each park
- Clearly explaining plans and diagrams and how they will impact the different neighborhoods
- Being specific regarding targeted action strategies that gradually build to a collective success



04 SCHEDULE

PROJECT SCHEDULE FOR: Castle Pines Park Design



HCM understands the full scope of the Castle Pines park design projects.

Below are the proposed fees per major phase as outlined in the proposal

	Project Phases					Fee Subtotal by Firm
	Phase 1 Project Initiation	Phase 2 Inventory & Analysis	Phase 3 Concept Planning & Community Engagement	Phase 4 Final Concept Plans & Review	Phase 5 Presentation of Findings	
Team Members						
Hord Coplan Macht (Prime Consultant) Landscape Architecture, Architecture, Graphics	\$ 4,875	\$ 9,385	\$ 25,765	\$ 16,870	\$ 7,030	\$ 63,925
JVA Consulting Engineers Civil Engineering	\$ -	\$ 3,674	\$ 7,348	\$ 5,511	\$ 1,837	\$ 18,370
AE Design Electrical Engineering & Site Lighting	\$ -	\$ 1,716	\$ 3,432	\$ 2,574	\$ 858	\$ 8,580
Avocet Irrigation Irrigation Design	\$ -	\$ 1,056	\$ 2,112	\$ 1,584	\$ 528	\$ 5,280
Accurate Estimating Services Cost Estimating	\$ -	\$ -	\$ -	\$ 10,852	\$ -	\$ 10,852
Fee Subtotal by Phase	\$ 4,875	\$ 15,831	\$ 38,657	\$ 37,391	\$ 10,253	

TOTAL FEE

\$ 107,007

Assumptions & Exclusions

1. Land survey, geotechnical report, traffic study and other site reports are not included for this initial design phase.
2. Subsurface Utility Engineering (SUE) is not included.
3. Design and Engineering beyond concept level are not included.
4. LEED or other green building certification design is not included.